



Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition and Assistance

Issued: August 3, 2004

AAPD 04-09

Anti-Trafficking Activities -- Limitation on the Use of Funds; Restriction on Organizations Promoting, Supporting or Advocating Prostitution

Subject Category: Assistance, Acquisition Management,
Personal Services Contracts
Type: Policy and Procedure

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are **EFFECTIVE AS OF THE ISSUED DATE** unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends
CIB/AAPD No: _____

Precedes change to: AIDAR Part(s) 752 & Appendix D, J
 USAID Automated Directives System (ADS) Chapters 302, 303 and 308
 Code of Federal Regulations _____
 Other _____
 No change to regulations

Applicable to: Existing awards; Modification required:
 Effective immediately
 No later than _____
 As noted in guidance below
 APS, RFAs and RFPs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, etc. for activities related to human trafficking
 Other: All new awards or modifications to existing awards obligating funds for human trafficking

New Provision/Clause Provided Herein: Yes; Scheduled update to Prodoc: Dec 2004
 No

(signed copy on file)

TIMOTHY T. BEANS

1. PURPOSE:

The purpose of this AAPD is to provide assistance provisions and a contract clause to include in grants, cooperative agreements, and contracts (including personal service contracts) for activities related to human trafficking, regardless of the year of funding and in compliance with the Trafficking Victims Protection Reauthorization Act of 2003, Pub.L. No. 108-193 (2003) (the “TVPRA”). The TVPRA enacts a number of amendments to the Trafficking Victims Protection Act of 2000 (the “TVPA”), Pub.L. No. 106-386 (2000).

One of the assistance provisions and the contract clause prohibit the use of funds provided under the award for promoting, supporting, or advocating the legalization or practice of prostitution. The assistance provision also requires foreign organizations receiving grants or cooperative agreements to implement programs that target victims of severe forms of trafficking in persons to state that they do not promote, support, or advocate the legalization or practice of prostitution, as more fully discussed in Section 3. Guidance, below. The second assistance provision is a solicitation provision that also states the prohibition on the use of funds.

This AAPD supplements the general grant-making guidelines to implement the National Security Presidential Directive (NSPD) on combating trafficking in persons signed on December 16, 2002, that were issued by the Senior Policy Operating Group.

2. BACKGROUND:

Section 7(7) of the TVPRA amends the TVPA to add the following new subsection 113(g):

“(g) LIMITATION ON USE OF FUNDS.—

(1) RESTRICTION ON PROGRAMS.—No funds made available to carry out this division, or any amendment made by this division, may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to promote the purposes of this Act by ameliorating the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

(2) RESTRICTION ON ORGANIZATIONS.—No funds made available to carry out this division, or any amendment made by this division, may be used to implement any program that targets victims of severe forms of trafficking in persons described in section 103(8)(A) of this Act through any organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution. The preceding sentence shall not

apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.”

The Legislative History of the TVPRA clarifies that an organization can satisfy the requirement set forth in subsection 113(g)(2) if it states in a grant application or in a grant agreement or both that it does not promote, support, or advocate such actions since it has no policy regarding this issue. 149 Cong. Rec. H10287 (daily ed. November 4, 2003) (statement of Rep. Smith).

The US Government has determined that it is appropriate to apply the requirement set forth in subsection 113(g)(2) only to foreign organizations, including public international organizations (PIOs).

The Senior Policy Operating Group on Trafficking in Persons, an interagency group, adopted “General Grant-Making Guidelines to Implement the National Security Presidential Directive on Combating Trafficking in Persons” in August of 2003. This document includes the following guideline: “Give priority for U.S. Government funds to combat trafficking to those organizations and their sub-grantees working on key U.S. Government objectives (whether in the areas of prevention, protection, assistance or prosecution) that are supportive, in policy and programs, of U.S. Government policies on combating trafficking in persons and prostitution, consistent with federal grant regulations.” See State Cable number 077363.

3. GUIDANCE:

A. Assistance Awards, including Grants to Public International Organizations (PIOs):

I. Eligibility

The following provision must be included in each new Request for Application (RFA) and Annual Program Statement (APS) that could lead to a grant or cooperative agreement for activities related to human trafficking funded from any year program resources.

“ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JULY 2004)

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted

from such victims being trafficked. Foreign organizations, whether prime or sub-recipients, that receive U.S. Government funds to fight trafficking in persons cannot promote, support or advocate the legalization or practice of prostitution when they are engaged in overseas activities. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.”

II. Limitation on the Use of Funds

The following provision must be included as a Standard Provision in any new or amended grant or cooperative agreement to a U.S. Non-Governmental (U.S. NGO), a Non-U.S. NGO, or a PIO that uses funds made available for activities related to human trafficking funded from any year program resources.

“PROHIBITION ON THE USE OF FEDERAL FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE LEGALIZATION OR PRACTICE OF PROSTITUTION - ASSISTANCE (JULY 2004)

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

(b) [This subsection (b) only applies to foreign non-governmental organizations and PIOs receiving U.S. Government funds to carry out programs that target victims of severe forms of trafficking as either prime awardees or subawardees.]

(1) For programs that target victims of severe forms of trafficking, as a condition of entering into this agreement or subagreement, the recipient/subrecipient agrees that in its activities outside of the United States and its possessions it does not promote, support, or advocate the legalization or practice of prostitution. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.

(2) The following definitions apply for purposes of this clause:

FOREIGN NON-GOVERNMENTAL ORGANIZATION – The term “foreign non-governmental organization” means an entity that is not organized under the

laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

SEVERE FORMS OF TRAFFICKING IN PERSONS. -- The term "severe forms of trafficking in persons" means—

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(c) The recipient shall insert this provision in all sub-agreements under this award.

(d) This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination, in whole or in part, of the agreement by USAID prior to the end of its term."

B. Contracts (including personal service contracts)

The following clause must be included in each new solicitation and contract for activities related to human trafficking funded with any year program resources.

In addition, this provision is to be included when any existing contract is modified to add funds for programs related to human trafficking.

"PROHIBITION ON THE USE OF FEDERAL FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE FOR THE LEGALIZATION OR PRACTICE OF PROSTITUTION – ACQUISITION (JULY 2004)

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this contract may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

(b) The contractor shall insert this clause in all sub-awards under this award.

(c) This provision includes express terms and conditions of the contract and any violation of it shall be grounds for unilateral termination, in whole or in part, of the contract by USAID prior to the end of its term.”

If the contract provides for the contractor to execute grants to non-Governmental organizations (not-for-profits or for-profits) in accordance with ADS Chapter 302 USAID Direct Contracting, section 302.5.6 Grants under Contracts, then the contractor must comply with the assistance provisions in Section 3.A of this AAPD when awarding grants or cooperative agreements under its contract (as required in ADS 302.5.6(c) and (d)).

4. POINT OF CONTACT:

Please direct any questions to Diane Howard, M/OAA/P, Phone: (202) 712-0206, e-mail: dhoward@usaid.gov.